

UNITED STATES DISTRICT COURT  
EASTERN DIVISION OF VIRGINIA  
RICHMOND DIVISION



UNITED STATES OF AMERICA,  
Plaintiff,

vs.

VICTOR BOLIVAR TORRES-CRUZ,  
Defendant,

Case No: 3:11-CR-0061

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Defendant's Renewed Motion for Judgement on the Pleadings  
Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure  
and Rule 12 of the Rules Governing Section 2255 Proceedings

Comes now the Defendant, Victor Bolivar Torres-Cruz, pro se,  
and hereby moves the Court pursuant to Rule 56 of the Federal  
Rules of Civil Procedure to proceed to Summary Judgement in the  
instant matter.

**Background**

Defendant filed a timely Motion to Vacate Sentence pursuant  
to 28 U.S.C. § 2255 on May 20, 2013.

On May 22, 2013, the Court entered an order requiring the  
United States to reply to the Defendant's motion no later than 45  
days from the date of the order, effectively giving the  
Government until the first week of July to provide the Court and  
Defendant with its answer.

On September 9, 2013, more than 60 days past the filing  
deadline, AUSA Borman filed a motion seeking to "extend" the  
time to which the Government had to file its answer.

The Court granted the government's motion two days later on  
September 11, 2013, (filed by the Clerk on 9/12/14), giving the

U.S. Attorney's Office an additional 60 days from the entry of the order to file its answer, said answer therefore was due November 11, 2013.

### **Judgement on the Pleadings**

The United States has failed to answer Defendant's motion in a timely fashion for the second time. The Government has failed, also for the second time, to make a timely motion for enlargement of the time the Court allocated for a response to Defendant's motion.

A.U.S.A. Norman has had more than 180 days to answer Defendant's motion and has thus far failed to make a single timely pleading. Defendant's great respect for Ms. Norman notwithstanding, Defendant must now ask the Court to proceed with the adjudication of his motion on the pleadings already filed, without any further consideration of any defenses or further evidence the Government may have wished to present.

Rule 12(c) of the Federal Rules of Civil Procedure provides, in pertinent part:

"After the pleadings are closed but within such time as to not delay trial, any party may move for judgement on the pleadings..."

As the time is now past for the United States to respond and the Government has, by any equitable application of the Rules of the Court, waived the right to file any response, Defendant submits that the Court can and should proceed to judgement on the pleadings.

## Applicability of the Federal Rules of Civil Procedure

Rule 12 of the Rules Governing Section 2255 Proceedings

reads:

"The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these rules."

Defendant points out that, at this stage, any other party who had twice disregarded the Court's scheduling deadline without even extending the Court the courtesy of an advance, pre-deadline request for enlargement of time, could hardly expect to be allowed to file a delayed answer and to have it entertained.

Given that habeas corpus, as codified in 28 U.S.C. § 2255, is essentially a civil proceeding in nature, and where the United States has twice, disregarded the Courts generous scheduling orders, Defendant submits that application of Rule 12(c) Fed. R. Civ. P. is appropriate.

## Conclusion

Wherefore, the Defendant prays that the Court will now proceed to judgement on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

Respectfully Submitted,

Victor Bolivar Torres-Cruz 2/12/13  
Victor Bolivar Torres-Cruz  
Defendant, pro se  
FCI Fort Worth #12921-021  
P.O. Box 15330  
Fort Worth, TX 76118

CERTIFICATE OF SERVICE

I, Victor Bolivar Torres-Cruz, do hereby certify that a true copy of the foregoing motion was served this 2 day of December, 2013 upon the Attorney for the Government by prepaid first class United States Mail.

Victor Bolivar T.C. 2/12/13  
Victor Bolivar Torres-Cruz